

Highlights of Changes to the Family and Medical Leave Act (FMLA)

Effective Date

The U.S. Department of Labor issued new Family and Medical Leave Act (FMLA) regulations and forms that went into effect on January 16, 2009.

Eligibility for FMLA

- The employee must meet eligibility requirements:
 - 12 months of employment with the State during the past seven years
 - 1,250 hours worked in the 12 months immediately preceding the date leave is to begin

Maximum Length of Leave

- An eligible employee is entitled to up to 12 weeks of non-military family member FMLA leave in a fiscal year on either a continuous, intermittent, or reduced leave schedule basis.

FMLA Leave

Eligible employees may use FMLA for:

- The birth of a son or daughter, and to care for the newborn child.
- Placement with the employee of a son or daughter for adoption or foster care.
- To care for the employee's spouse, son, daughter or parent with a serious health condition.
- Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

Continuing Treatment

- Continuing treatment includes any one or more of the following:
 - Incapacity of more than three calendar days and treatment
 - Treatment must involve:
 - Treatment two or more times by a health care provider within 30 days of the first day of incapacity **or**
 - Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
 - Treatment by a health care provider means an in-person visit to a health care provider. The first visit (or only) in-person treatment visit must occur within seven days of the first day of incapacity.
 - Pregnancy or prenatal care
 - Chronic conditions
 - The employee must have two or more visits to a health care provider per year.
 - Permanent or long-term conditions
 - Conditions requiring multiple treatments.

Required Posting

- There is a new poster [Employee Rights and Responsibilities under the Family and Medical Leave Act](#) (WHD Publication 1420, January 2009).
- The poster
 - Must be provided to each employee when hired.
 - Must be printed and posted for employees that do not have access to computers at work.
 - Must be visible to all job applicants.
- The poster is available at the DAS State Employment and Benefits Web sites.

Required Employer Notices

- Employer is required to provide two notices to an employee requesting FMLA or becoming aware that an employee's leave may be for an FMLA-qualifying reason.
- [Notice of Eligibility and Rights & Responsibilities](#) (WHD Publication 381, January 2009) must be provided to an employee within five business days of the date an employee requests FMLA or the employer becomes aware that an employee's leave may be for an FMLA-qualifying reason.
- [Designation Notice](#) (WHD Publication 382, January 2009) must be provided to the employee once sufficient information is available to determine that the employee's leave will be designated as FMLA. The employee must be notified within five business days that the leave has been designated as FMLA.

Required Employee Notice

- An employee completes a [Family and Medical Leave Application](#) (CFN 552-0599).
- Employees must sufficiently explain the reasons for leave so as to allow the employer to determine whether the leave is FMLA leave.
- Calling in sick is not considered a sufficient notice.
- Leave may be denied if the employee fails to explain the reasons for leave.
- Employees must inform the employer if leave is for a reason for which leave was previously certified.

Different Medical Certification Forms for Employees and Family Members

- There are separate forms for certification of the serious health condition of an employee or a family member.
- The [Certification of Health Care Provider for Employee's Serious Health Condition](#) (Form WH-380-E, Revised January 2009) provides space for the employee's essential job functions, as well as a check off to indicate that the employee's job description is attached.
- The [Certification of Health Care Provider for Family Member's Serious Health Condition](#) (Form WH-380-F, Revised January 2009) asks for more detailed information about the family member's condition and the amount of time that the employee might be needed to care for their family member.
- The employee must be allowed seven calendar days to provide the additional information if the certification is incomplete or insufficient. The employee must be notified in writing of the additional information that is needed. FMLA leave may be denied if the employee fails to provide the information.

Clarification and Authentication of Certifications

- The employer may contact the health care provider directly for purposes of clarification and authentication of the medical certification after the employer has given the employee the opportunity to cure any deficiencies.
- The employer contact must be made by:
 - Health care provider;
 - Human resources professional;
 - Leave administrator; or
 - Management official.
- Under no circumstances may the employee's direct supervisor contact the employee's health care provider.

Fitness for Duty

- The employer may require a fitness-for-duty certification form from the employee's health care provider as evidence that the employee is able to perform the essential functions of his or her position.
- The employer may require that the certification specifically address the employee's ability to perform the essential functions of their position.
- In order to require a fitness for duty certification, the employer must provide the employee with a list of the essential functions of the employee's job no later than when the designation notice is provided to the employee.

Light Duty

- Time that an employee spends working light duty does not count toward the 12 week FMLA entitlement during the leave year.

Compensatory Leave

- Employees are required to use accrued compensatory leave, holiday compensatory time and banked holidays during periods of FMLA leave.

Inability to Work Overtime

- Missed overtime must be counted against an employee's FMLA entitlement if the employee would have been required to work overtime but for their FMLA condition.

New Medical Certification Every Leave Year

- The employee must provide a new medical certification in each subsequent leave year if the need for leave lasts beyond a single leave year.

Resources

- [State of Iowa FMLA Policy \(Effective 01-16-2009\)](#)
- [Federal regulations](#)

Questions

Please direct any questions to your Personnel Officer or Sheryl Jensen (sheryl.jensen@iowa.gov) or 515-281-8866.